THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.14489 OF 2006

DATED: 15-03-2007

BETWEEN

T.S. Param Jyothi,
S/o. T. Stephen,
Occ: Govt. Employee,
H.No.1-1-1430,
Venkatadrinagar,
Warangal District.

...PETITIONER

AND

Dr. K. Anil Kumar,
H.No.5-11-578,
Vidyaranyapuri,
Hanumakonda,
Wrangal and others.

...RESPONDENTS

ORDER:

Petitioner herein earlier filed W.P.No.13346 of 2006 seeking a Writ of Mandamus to restrain the respondents 3 and 4 herein from taking any coercive steps in recovering the money by auctioning the property of the guarantor by way of publication of auctioning of property in Eenadu daily dated 27.03.2006 without auctioning the property of principle borrower in collecting the due amounts.

2. The said writ petition was dismissed on 03.07.2006 as follows:

> "The writ petition is misconceived on law and has no foundational support in fact.
>
> The first respondent obtained a loan from the fourth and fifth

respondents for acquisition of property for nursing home and medical equipment and to meet the working capital requirements, in the year 2002. The petitioner and the respondents 2 and 3 are said to have stood as guarantors for repayment of the loans. The second respondent is the petitioner's wife. Admittedly, the first respondent defaulted in the repayment of the loan to the fifth respondent. Thereupon, on behalf of the fourth respondent, a notice dated 27.03.2006 was issued to the petitioner and his wife, the second respondent, intimating that the first respondent had defaulted in the payment of dues to the fourth respondent and therefore, the fourth respondent corporation is proceeding to advertise the guarantors property for sale by a publication in Telugu daily dated 27.03.2006. The petitioner thereupon states to have contacted the first respondent who is claimed to have assured the petitioner that he would take care of the situation. Based on the said assurance the petitioner did nothing further in the matter. Now the fourth respondent corporation is proceeding to finalize the sale transaction pursuant to the sale notification dated 27.03.2006. Hence, the writ petition.

The petitioner contends that the respondents 4 and 5 are disentitled in law to proceed against the guarantors' property for recovery of loans due to the respondents 4 and 5 by the first respondent, without first proceeding against the first respondent- the principal debtor.

It is the settled principle in law that the liability of a guarantor is co-extensive and independent of the liability of the principal debtor. It is a joint and several liability. The petitioner does not state that the instrument of guarantee executed by the petitioner in favour of the respondents 4 and 5 excludes or postponed the liability of the petitioner as the guarantor till the respondents 4 and 5 recover the dues from the assets of the first respondent – the principal debtor.

In the circumstances, no mandamus can be issued to interdict the right of the respondents 4 and 5 to proceed and recover the dues from the petitioner, who is admittedly the guarantor to the debt of the first respondent. There are no merits. The writ petition is accordingly dismissed. No order as to costs."

3. The petitioner filed this writ petition for the self-same relief to declare

the action of the respondents for dispossessing him from the residential house, which was also mortgaged giving collateral security, as illegal and arbitrary. The petitioner, however, has not disclosed either filing of the earlier writ petition or disposal of the writ petition. Therefore, I am of the opinion that this writ petition is liable to be dismissed for suppression of facts and also the writ petition is not maintainable in view of the self same relief claimed in the earlier writ petition.

Following the aforesaid order, this writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

March 15, 2007
DSK